

CHAPTER 189-2

PRACTICE AND PROCEDURE

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189-2-.01 Definitions

The following words and terms as used in these rules shall have the meaning hereinafter ascribed to them or as set forth in O.C.G.A. § 21-5 et seq.:

- (1) "Advisory Opinion" – an opinion issued by the Commission on real or hypothetical circumstances potentially affected by the Ethics in Government Act on issues under which the Commission has jurisdiction.
- (2) "Complainant" - a person who files a written complaint alleging a violation of one or more laws under the jurisdiction of the State Ethics Commission.
- (3) "Compliance Order" – a written document wherein the Commission and the Respondent agree and consent to terms which may include findings of fact, conclusions of law, cease and desist language, remedial action to be taken, oral or written statements to be made or issued, prohibition of actual or threatened violations, the ordering of actions necessary to correct cited deficiencies and a waiver of any appeal rights.
- (4) "Consent Order" - a written document wherein the Commission and the Respondent agree and consent to terms which shall include admissions of violations by the Respondent, findings of fact; conclusions of law, cease and desist language, imposition of civil penalties, late filing fees, and/or administrative fees and which may include, among other things, remedial actions to be taken, oral or written statements to be made or issued, prohibition of actual or threatened violations, or the ordering of actions necessary to correct cited deficiencies and a waiver of any appeal rights. Consent Orders must be signed by the Respondent and received by the Commission staff not later than seven (7)

days prior to the date the case is scheduled to be heard before the Commission, unless the Executive Secretary has approved an extension of time.

(5) "Contested Case" - a hearing in accordance with the Georgia Administrative Procedure Act.

(6) "End Recipient" - the party paid for providing goods or services to benefit a candidate, officeholder, or campaign committee regardless of whether such payment is arranged, passed through, or paid by a third party or agent for the candidate, officeholder, or campaign committee.

(7) "Hearing" - a proceeding before the Commission or its designated hearing officer for either the consideration of a modification or a change in existing rules, or for an adjudication of issues presented in a contested case, at which all parties at interest are afforded an opportunity to present testimony, documentary evidence and arguments, as to the matter under consideration.

(8) "Hearing Officer" - an individual designated by the Commission for the purpose of presiding over a hearing as herein defined.

(9) "Notice of Hearing" - a written statement of the substance of a specific charge alleging violation of the statute, rule, or regulation to be considered at a hearing to the person or party affected thereby, or of the substance of a proposed rule to be considered, which will afford actual notice to all interested persons. Notice shall be given in accordance with the Georgia Administrative Procedure Act.

(10) "Preliminary Hearing" - a proceeding before the Commission for the purpose of deciding if there are reasonable grounds to believe that the Ethics in Government Act or other statute under the jurisdiction of the Commission has been violated, or if there are reasonable grounds to believe there has been a failure to comply with any rule or regulation promulgated by the Commission, and if the matter should be set down for a "Hearing" for the purpose of determining whether a violation of the Ethics in Government Act or other statute within the jurisdiction of the Commission and whether any sanctions should be imposed should a violation be found. This term also specifically includes hearings held pursuant to the issuance of an Administrative Subpoena.

(11) "Respondent" - a person against whom a complaint is filed or who has been added as such by the Commission at a preliminary hearing based on a finding of reasonable grounds to believe that a violation has occurred; or a person who has been named a Respondent by the Commission by virtue of a finding of probable cause to open an investigation.

(12) "Rule" - any regulation, standard, or statement of general or particular applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the Commission.

(13) “Substantial Compliance” – the requirement that all reports submitted pursuant to the Ethics in Government Act be at least 90% compliant with respect to technical defects.

Authority O.C.G.A. § 21-5-6, 21-5-7. **History.** Original Rule entitled “Definitions” adopted. F. Apr. 9, 1987; eff. Apr. 29, 1987. **Amended:** F. Feb.22, 2000; eff. Mar.13, 2000. **Amended:** F. Oct. 12, 2006; eff. Nov. 1, 2006. **Repealed:** New Rule of same title adopted. F: Dec 18, 2007; eff: Jan. 7, 2008.

189-2-.02 Administrative Declaratory Rulings.

- (1) Availability of a Declaratory Ruling. Any person whose legal rights have been interfered with or impaired by the application of any statutory provision or any rule or order of the Commission may petition the Commission and request a declaratory ruling thereon. The Commission will not render advisory opinions or resolve questions that become moot or take any other action hereunder except with respect to cases upon which a superior court would be required to act under the Georgia declaratory judgment statutes as construed by the appellate courts of Georgia.
- (2) Form of Petition. Each such petition shall be filed with the Commission in writing and shall state:
 - (a) the name and post office address of the petitioner,
 - (b) the full text of the statute, rule, order upon which a ruling is requested,
 - (c) a paragraph statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute or rule;
 - (d) petitioner’s contention, if any, as to the aforesaid applicability with citations of legal authorities, if any, that authorize, support, or require a decision in accordance therewith,
 - (e) a statement setting forth in detail the petitioner’s interest in the matter and why and how the petitioner is uncertain or insecure with respect to his rights. The petition shall be verified under oath by, or in proper behalf of, the petitioner.
- (3) Proceedings on Petition. If the Commission shall determine that a decision can be rendered on the face of the petition without further proceedings, it shall render a summary decision thereon. Otherwise, all parties known by the Commission to have a legal interest in the matter shall be notified and given an opportunity to be heard at an informal hearing.

- (4) Informal Request for Interpretation and Rulings. The provisions of this Rule shall not be construed to preclude:
- (a) Any person from requesting the Commission to interpret or otherwise rule upon the applicability of any pertinent statute or rule informally by personal appearance before the Commission, by letter or by telegram to the Commission; or
 - (b) The Commission from acting upon any such request whenever and however it deems appropriate, or from issuing any interpretative ruling without petition therefore.
- (5) Any request presented in any manner other than in accordance with the provisions of this Rule shall not be deemed to be filed as a Petition for Declaratory Ruling but shall be deemed an informal request for interpretation or ruling and shall be acted on as such.

Authority O.C.G.A. § 21-5-6; O.C.G.A. § 50-13-11. **History.** Original Rule entitled “Administrative Declaratory Rulings” adopted. Apr. 9, 1987; eff. Apr. 29, 1987.

189-2-.03 Complaints

- (1) Form of Complaint. All complaints to be considered by the Commission shall be filed in writing with the Commission and shall contain the following:
- (a) The name and address of the person or persons who file the complaint.
 - (b) The sworn verification and signature of the complainant.
 - (c) The name and address of the party or parties against whom the complaint is filed, and if any such party is a candidate, the office being sought.
 - (d) A clear and concise statement of the facts upon which the complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the Commission.
 - (e) A general reference to the statutory provision(s) of the Ethics in Government Act, Vendor Gift Disclosure Law, Commission Rule, or any other statute within the jurisdiction of the Commission allegedly violated.
 - (f) Any further information which might support the allegations in the complaint including, but not limited to, the following:
 - 1. The name and address of all other persons who have firsthand knowledge of the facts alleged in the complaint;

2. Any documentary evidence that supports the facts alleged in the complaint.
- (2) Technical Defects. Upon receipt of a complaint that alleges technical defects as identified by the Ethics in Government Act, the Commission staff shall follow the guidelines as outlined therein.
- (3) Preliminary Action on the Complaint. Upon receipt of a complaint, the Commission staff shall send a copy of the complaint to the respondent affording an opportunity to respond to the complaint within thirty (30) days in writing if desired. Responses or other documents submitted by the Complainant or Respondent to the Commission after the thirty day period may be disregarded by the Commission or staff during the preliminary investigation or at the preliminary hearing. If additional violations are discovered during the investigation of any complaint, notice shall be given to the Respondent as to those additional violations. The Respondent shall then have fourteen (14) days from the date of the notice to provide a response. Otherwise, Commission staff shall present a Probable Cause petition to the Commission.
- (4) Defective Complaint. Upon receipt of a written complaint which does not conform to the requirements of paragraph (1) of this Rule, the Executive Secretary of the Commission shall by letter acknowledge receipt of the complaint, advise the complainant of the defect in the complaint and inform the complainant that the complaint will not be considered by the Commission unless the defect is corrected.
- (5) Preliminary Investigation of Complaint. The Commission staff shall conduct a preliminary investigation of any non-defective complaint and recommend as a part of its on-going investigation what further action, if any, should be taken. If the Commission staff should determine that there is no basis for proceeding on a complaint under the Ethics in Government Act or any other statute within the jurisdiction of the Commission, then the staff shall so notify the Complainant and administratively dismiss the complaint without requiring any formal action by the Commission.
- (6) Preliminary Hearing. Following the preliminary investigation the complaint shall be scheduled for a preliminary hearing before the Commission and the Complainant and Respondent shall be notified of the scheduled hearing date. At such hearing, the Commission shall determine whether there are reasonable grounds to believe that a violation has occurred and if such a finding is made the matter will be set down for a hearing pursuant to the Georgia Administrative Procedure Act. The Respondent will have 30 days to initiate resolution of the matter with Commission staff prior to an APA hearing. If the Commission finds no reasonable grounds to believe a violation has occurred, the complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material.

- (7) Consideration of the Complaint. If at the preliminary hearing it is determined that further action is warranted, the Commission shall proceed as provided by law in contested cases. Nothing in this rule shall require the Commission to dispose of any matter in a single hearing nor shall this rule prevent the matter from being subject to further investigation by the Commission staff.
- (8) The Commission shall not initiate an investigation on any complaint filed within thirty (30) days of an election in which the subject of the complaint is a participant or candidate in said election.

Authority O.C.G.A. §§ 21-5-6, 21-5-7 and 21-5-7.1. **History.** Original Rule entitled “Complaints” adopted. F. Apr. 9, 1987; eff. Apr. 29, 1987. **Amended.** F. May 6, 1987, eff. May 26, 1987. **Amended:** F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Oct. 12, 2006; eff. Nov. 1, 2006. **Repealed:** New Rule of same title adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.

189-2-.04 Initiation of Investigations by the Commission

The Commission may initiate on probable cause an investigation into suspected violations of laws or rules under its jurisdiction as it deems necessary. In such case, the applicable procedures found in SEC Rules 189-2-.03, 189-2-.05, and 189-2-.06 shall be followed in the investigation. The respondent shall be notified by the Commission staff in writing of the initiation of the investigation and of the basis for the finding of probable cause to open the investigation. The Commission staff shall not be required to file the Complaint form described in Rule 189-2-.03(1) nor to follow the procedures required under that Rule.

Authority O.C.G.A. §§ 21-5-6, 21-5-7. **History.** Original Rule entitled “Contested Cases; Notice; Hearing; Record” adopted. F. Apr. 9, 1987; eff. Apr. 29, 1987. **Repealed:** New Rule entitled “Initiation of Investigations by the Commission” adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Repealed:** New Rule of same title adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.

189-2-.05 Contested Cases; Notice; Hearing; Record

In any contested case, after the preliminary hearing has been completed and the matter has been scheduled for an administrative procedure act hearing, the Commission shall follow the rules adopted by the Commission and shall comply with the provisions of the Georgia Administrative Procedure Act in the matter and in hearing the contested case.

Authority O.C.G.A. §§ 21-5-6, 21-5-7 and 50-13 *et seq.* **History.** Original Rule entitled “Rules of Procedure for Regular Commission Meetings” adopted. F. May 31, 1989; eff. June 20, 1989. **Repealed:** New Rule entitled “Contested Cases; Notice; Hearing; Record” adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Oct. 12, 2006; eff. Nov. 1, 2006. **Repealed:** New Rule of same title adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.

189-2-.06 Rules of Procedure for Regular Commission Meetings

Regular meetings of the State Ethics Commission shall be conducted, to the extent practicable, in accordance with Robert's Rules of Order, which are hereby adopted as the Rules of Procedure for conducting such meetings. The Chairman of the Commission, or the Commissioner acting in that capacity, shall have the authority to make rulings regarding procedural matters and issues coming before the Commission. A majority (of a quorum) of the Commission may alter, amend, or reverse any such procedural ruling. A copy of Robert's Rules of Order will be maintained by the Executive Secretary of the Commission and available at all regular meetings.

Authority O.C.G.A. §§ 21-5-6 and 21-5-7. **History.** Original Rule entitled "Commission Investigations and Hearings" adopted. F. July 18, 1989; eff. Aug. 7, 1989. **Repealed:** New Rule entitled "Rules of Procedure for Regular Commission Meetings" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000.

189-2-.07 Investigations and Hearings

Whenever the Commission staff is informed by a filing officer or determines independently that a candidate, public officer, or other person required to file a Financial Disclosure Statement, Campaign Contribution Disclosure Report, or any other document under the jurisdiction of the Commission, has failed to file or has failed to properly file any required report or document, the Commission staff will initiate enforcement action.

- (1) Administrative Subpoena. If the person does not comply with requirements of the law, or if it is otherwise deemed appropriate by the Commission staff, an Administrative Subpoena shall be served upon the person by mail commanding that the person attend a Commission meeting to explain the person's failure to comply with the law.
 - (a) If the person subpoenaed properly files, or otherwise complies, the Executive Secretary will review any document or other circumstances for compliance and may propose the terms of a consent order or other disposition for consideration by the Commission at a regular meeting.
- (2) Following the service of an Administrative Subpoena the Commission may thereafter direct the issuance of a Notice of Hearing under Rule 189-2-.05 unless the Commission determines that the Administrative Subpoena should be dismissed or resolved by consent order or other disposition without the conducting of a hearing in accordance with the Administrative Procedure Act.

Authority O.C.G.A. §§ 21-5-6 and 21-5-7. **History.** Original Rule entitled "Treatment of Fines Imposed by Commission" adopted. F. July 18, 1989; eff. Aug. 7, 1989. **Repealed:** New Rule entitled "Investigations and Hearings on Required Reports or Documents" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Repealed:** New Rule entitled "Investigations and Hearings" adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.

189-2-.08 Disposition of Cases

(1) After completion of appropriate proceedings, the Commission or its duly appointed officer may:

- (a) Dismiss the case if no violation is found.
- (b) Issue a Compliance Order
- (c) Issue an Order, including a Consent Order, finding one or more violations of law under the jurisdiction of the State Ethics Commission, and imposing civil penalties as provided by law, including but not limited to:
 - (i) Assessment of civil penalties in a dollar amount not to exceed the maximum authorized per violation times the number of violations found; and
 - (ii) Order the filing or amending of any delinquent or deficient document or report required to be filed by law under the jurisdiction of the State Ethics Commission and on a form or in the manner required by the Commission, within a certain time period with copies to be filed with the Commission; and
 - (iii) Ordering such other actions as necessary to bring about compliance with the law, including prohibiting the actual or threatened commission of any conduct constituting a violation.
- (d) Suspend the hearing and report all preliminary findings to any prosecutorial authority for any action deemed appropriate.
- (e) Postpone findings and any possible penalty for rescheduling and consideration of the matter at a future meeting, and subject to the taking of any interim action suggested by the Commission as dispositive in lieu of further proceedings.

(2) If a Hearing Officer hears a contested case and issues an Initial Decision:

- (a) The Initial Decision will become the Final Decision by operation of law unless the Respondent or Attorney General's office makes a written request for review by the Commission within 30 days of the filing of the Initial Decision. Nothing in the Rules shall be construed to prevent the Commission, within 30 days of the Initial Decision, from ordering a review of any Initial Decision rendered by the duly appointed Hearing Officer.
- (b) If the Respondent or Attorney General's office files a motion for review within 30 days of Initial Decision of the Hearing Officer, the Respondent or Attorney General's office shall include therein a statement of the reasons for

seeking review and alleged errors made by the Hearing Officer in the Initial Decision. The Commission's review will be limited to those issues raised by the Respondent or Attorney General's office in the motion for review or by the Commission in its order for review.

(c) Upon the filing of a motion for review within 30 days of the Initial Decision, by the Respondent or Attorney General's office, or upon the filing of a timely order for review by the Commission on its own motion, notice of the date and time for the review shall be served on the Respondent or counsel for the Respondent and Attorney General's office.

(d) On review of the Initial Decision, the Commission shall have all the powers it would have in making the Initial Decision, and in its discretion shall have the power to take additional testimony or remand the case to the original hearing officer for such purpose, as provided in the Administrative Procedure Act and in accordance with this rule. The Respondent or Respondent's counsel and the Attorney General's office shall docket any motion, including motions to present additional evidence, at least fourteen (14) days before the date set for the Review Hearing. Responses to any such motions shall be docketed at least seven (7) days before the date set for the Review Hearing.

(i) Motions to present additional evidence or to remand the case to the original hearing officer for such purpose shall be granted only if the additional evidence is material and there was good cause for failing to present such evidence before the original hearing officer. The Commission shall enter an order as to the legal sufficiency of all motions, including motions for the presentation of additional evidence, prior to the Review Hearing.

(ii) Unless the Commission has granted a motion to present additional evidence, the Commission shall not receive any additional evidence by testimony or through documents at the Review Hearing. When represented by counsel at the Review Hearing, only counsel for the Respondent is permitted to make oral argument on behalf of the Respondent. When represented by counsel, unless the Commission has granted a motion to allow the additional testimony of the Respondent at the Review Hearing, the Respondent may not make a statement to the Commission, and any questions of the Respondent by the Commission shall be directed to the Respondent's counsel. During oral argument, questions by the Commission and the responses thereto shall not exceed the scope of the record under review unless the Commission has granted a motion to present additional evidence.

(e) Oral argument up to twenty (20) minutes per side is permitted in the Review Hearing. Additional time for argument must be requested in writing and docketed at least fourteen (14) days before the date set for the Review Hearing.

(f) Once the Review Hearing is concluded, the Commission shall deliberate as to the Final Decision in open session. At the conclusion of the deliberations, the vote of the matter shall be conducted in open session.

Authority O.C.G.A. §§ 21-5-6, 21-5-7 and 50-13 *et seq.*. **History.** Original Rule entitled "Disposition of Cases" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Oct. 12, 2006; eff. Nov. 1, 2006. **Repealed:** New Rule of same title adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.

189-2-.09 Civil Penalties Imposed by the Commission

All civil penalties imposed by the Commission shall be made payable to the State Ethics Commission, and such funds shall be processed for delivery to the State Treasury.

Repealed: New Rule entitled "Civil Penalties Imposed by the Commission" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000.

189-2-.10 Statute of Limitations

Unless otherwise designated by the Ethics in Government Act, complaints or cases falling within the jurisdiction of the Commission shall be filed within five years of the conduct set forth in the complaint which allegedly violates the Act.

Authority O.C.G.A. § 21-5-6. **History.** Original Rule entitled "Statute of Limitations" adopted. F. Dec. 18, 2007; eff. Jan. 7, 2008.